

## PROSTITUTION IN INDIA: LEGAL YET ILLEGAL

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### ABSTRACT

Prostitution has a long history in India. It is as ancient as civilization and prostitution have been a part of Indian culture from the very beginning ever since the concept or practice of marriage was evolved. Dating back to ancient times and continuing until the 19th century in British India and exists in today's modern world. Prostitution is that kind of occupation that was rejected by society ever since and even now society denies the presence of such a profession and considers it to be taboo. Prostitution recently has started to get associated with violence, prejudice, and exploitation. In most cases, the poor people, unskilled and ignored section of the society who is more vulnerable get targeted. Prostitution business makes billion of money not just in India but throughout the world by exploiting individuals who are socially and economically weak or unstable. While, in some cases, girls are being sold by their respective counterparts or other family members. Girls are even kidnapped and are sold to the other people who run this prostitution business. On the other hand, some girls do it for money as they are unskilled and require money. The women involved in this coercive type of sexual abuse are termed, prostitutes. The research report will begin with descriptive diagram of what prostitution is. This report also states the background or history of prostitution in India. This paper looks into how exploitation and violence have slowly entered into prostitution. The report also looks into various possible consequences of the legalization and regulation of prostitution in India. This report will also state examining portions of authorizing business sex work in India and whether it is believability considering the different social and legitimate limitations that are existent in our country. This report also states the international laws and regulations adopted by different countries on prostitution. We will also see the state of prostitution in India and will also discuss why prostitution should be legalized? We know that prostitution is a thing to stay and will continue to be even if it is criminalized also. In that case, the government should work to solve the various problems faced by several women in this business rather than work on criminalizing it so that the condition of women involved in prostitution is improved.

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## INTRODUCTION

Whenever we talk about prostitution to anyone the instant response we get is “how disgusting! How is that even possible that anyone sells themselves?” there are some who are also in favor of prostitution who often say that prostitution should be a woman’s choice and it can be empowering too. These restricting perspectives reflect the bigger social impression of prostitution. "Subjection still exists, however presently it applies to women and its name is prostitution". This explains how deprived women are. The constitution of Indian talks about the right to equality for everyone but this is contradictory to what happens in India. There are a few professions where there is no such thing called as EQUALITY. Prostitution can be characterized as non-particular sex turn done for cash or other material resources. Times have changed and women are not the only gender involved in prostitution. Men and transsexual people are likewise engaged in prostitution, albeit they are lesser in number than ladies. With regards to India, there is a mention of prostitution in the Rig Veda. In archaic India, the Tawaifs served respectability in dance, music, and preferences. This was an important type of prostitution, which later developed into sexual blessings for the average citizen. In the current time, this is called prostitution. The main inquiry that emerges for prostitution is whether its authorization is to improve things or for dreadful

Prostitution is a 40,000 crores business in India. There are around 10 million sex experts in India. Asia's greatest sex industry center which is Mumbai alone has 100,000 sex experts. There are approximately 300000 youngsters involved in this business and Bangalore alone accounts for 80% of child prostitution. These numbers are frightening and it also shows how important it is for the state to intervene in this matter. It is high time we accept prostitution as a business and give women in this profession their basic rights. Women in prostitution have to go through a lot be it taking a higher risk or physical violence, they go through what we can call hell. Top of all is society and its year-old regulations regarding prostitution. People in prostitution are not given their basic rights such as healthcare. Because of the taboo surrounding prostitution, prostitutes frequently seek medical help. Prostitutes are susceptible to undesired pregnancies, HIV/AIDS, and other STIs. Prostitution if regulated, will assist to reduce the threat. They are always judged and severely criticized by society. The legalization of prostitution has its good and bad. The good thing is that the condition of women in prostitution will be improved as they suffer a lot due to the physical violence by men and social exclusion by society. Talking about equality, our constitution provides equality for all. Meanwhile, the reality is far away from this,

prostitutes still fight for basic rights. If prostitution is legalized and regulated by the state, it can give women, men, and transgender involved in this business to live freely and not be ashamed of them. On the other hand, the bad being, there will be an increase in the number of prostitutes as they can be forced by family members, especially by the ones in need of money. The social change that is happening for women will be affected, as more and more women will be thrown away or sold by their families or any other person to earn money. The most pressing question about prostitution is whether it is better or worse to legalize it. Prostitution is now allowed in Austria, various Australian and New Zealand states, Canada, Belgium, and Brazil.

## CAUSES OF PROSTITUTION

**Poverty and Unemployment:** Unemployment and poverty appear to be the primary reasons why women opt to work in the prostitute industry. The most important predictors of street prostitution were lack of job opportunities and a lack of shelter.

**Women tricked into Prostitution:** In comparison to women in metropolitan regions, the majority of women in rural society make less money. They are sometimes duped into prostitution by promises of good jobs in the city or overseas. As a result, they are drawn to the middleman's employment offer in the city. It is also possible that they will be abducted and forced to work as prostitutes.

**Expectations and issues within the family:** Women, in particular, are under pressure to help a sick family member or pay for their sibling's schooling. Adolescents have also left their homes due to other factors such as broken households or persistent sexual assault from parents. Following sexual abuse, running away is a frequent survival or defense technique, and sexual abuse is a common factor among prostitutes.

## TYPES OF COMMERCIAL SEX WORKERS

**Pillow Homes:** The worst brothels are known as "pillow homes," where women are segregated in small rooms by fabric barriers. Visitors have to pay a minimum of a thousand rupees or more for a few minutes, and security is maintained to prevent prostitutes from interacting with their clients. The money is paid to the brothel owner, who retains it. Because there is a link between criminal gangs, pimps, brothel owners, and local police, who share the majority of their money, fleeing is never an option. It's no secret that all of India's major red-light districts

are under police protection, which implies that police officers visit the brothels for tea, pastries, and females. They warn the brothel keepers ahead of time of the raids that are planned in exchange for favors. Because they have nowhere else to go, are uneducated, and have been smuggled into the city, most prostitutes do not even attempt to flee.

**Call Girls:** Call girls are part-time commercial sex workers who are typically better educated, have mobile phones, are well-groomed, and cannot be compared to those who work in brothels. They have greater freedom in picking their clientele, who are usually from the middle and upper sections of society, and they receive better wages. In Delhi, Bombay, and Calcutta, a survey of 150 call girls, 20 customers, and 10 "madams" discovered that 80% of their clients were married. Many of them had at least once been infected with sexually transmitted diseases (STDs) and had gone through induced abortion.

**Girls for hire as escorts:** High-class escort ladies are recruited from women's universities and India's expanding fashion and film industries at the most expensive end of the supply chain. These CSWs frequently operate under the idea of a secret method of prostitution service and offer services for big quantities of money. With the growth of Internet services, various flashy websites have emerged openly selling escort female services.

## DEVADASI: A HINDU RELIGIOUS SYSTEM

The Devadasi practice, often known as "holy prostitution," is a type of sex trade that extends back several centuries, with documented records dating back to the 12th century. The practice entails a religious process in which girls and women are married to various gods and goddesses, with a special focus on the goddess Yallama, who is worshipped at a tiny temple in northern Karnataka. It is currently considered a subterfuge to perform temple obligations, which mostly entail offering sexual favors to temple priests and customers. Although it is currently illegal, the practice persists in Maharashtra, Karnataka, and Andhra Pradesh.

## GIGOLOS: ROLE REVERSAL?

Call it gender reversal, Western influence, or confirmation that India's sex revolution is well underway, but Indian gigolos, or male prostitutes who entertain women for a living are here to stay. Previously, the eunuchs or hijras made up a considerable share of male prostitutes. It can now be a well-dressed man who frequents Internet forums, coffee shops, upscale restaurants,

and multiplexes. The gigolo trail through Ahmadabad, Bangalore, and Delhi was the subject of a 30-minute CNN-IBN special investigation program.

## **PROSTITUTION OF MINORS**

Child prostitution is the worst face of the sex trade in many Asian nations. According to UNICEF research from 2004, India alone has 500,000 child sex workers. Given the explosive growth of sex tourism, the number is certain to have exploded to terrifying levels. Poor families are duped into selling their children to these kinds of jobs for pitiful wages. Girl children who have been the victims of incest are occasionally forced into this profession by their family members.

## **IS PROSTITUTION ILLEGAL IN INDIA?**

In terms of prostitution, there are three types of nations. Kenya, Morocco, Afghanistan, and other countries where prostitution is not tolerated and is banned. Prostitution is allowed in several countries, but only with particular constraints and restrictions, such as India, Canada, and France. Prostitution is legal and regulated in countries such as New Zealand, Australia, Austria, the Netherlands, and others. One of the most pressing questions is whether prostitution is legal in India, and if so, what rights do prostitutes have? The answer to this question lies between "Yes" and "No." Prostitution is not explicitly illegal in India because it is not expressly stated to be punishable by law. However, a few activities related to prostitution, such as running brothels, soliciting, trafficking, and pimping, are all punishable offenses in India under THE IMMORAL TRAFFIC (PREVENTION) ACT (1956). For example, whereas getting money in return for sex with consent and without any previous imploration is illegal in India, receiving money in exchange for sex with consent and without any prior imploration is not.

## **LAWS RELATING TO PROSTITUTION**

According to Section 2(f) of The Immoral Trafficking Act (1956), "prostitution" is defined as the sexual exploitation or misuse of any individual for any commercial reason. The Indian Penal Code 1860 has sections 372 and 373 that deal with prostitution, although they solely apply to child prostitution. Though sections 366A, 366B, and 370A of the IPC deal with the punishment of underage girl procreation, foreign girl importation for sex, and exploitation of a

trafficked person, respectively. As a result, the scope of the IPC's prostitution prohibitions is fairly limited.

## RIGHT FOR PROTECTION OF SEX LABOURS

Fundamental rights are available to all citizens of India, according to the Indian Constitution, and sex workers, as citizens, are entitled to these rights. A prostitute has the right to life under Article 21 of the Indian Constitution, as was underlined in the case of *Budhadev Karmaskar versus the State of West Bengal*. Budhadev Karmakar, the accused in this case, was found guilty of killing a sex worker in Kolkata in 1999. The court went on to say that a woman engages in prostitution, not for the joy of it, but because she is poor. If such a woman is given the chance to receive technical or vocational training, she can use her expertise to earn a living rather than selling her body. As a result, the Supreme Court ordered the federal government and state governments to develop plans to provide vocational training to sex workers across the country.

## LEGAL YET SECRET?

The Immoral Traffic (Prevention) Act, 1957 (Act/ITPA) is a piece of legislation that prohibits prostitution. This law makes it illegal to engage in certain prostitution-related activities. Below, we'll go through the most significant aspects. Keeping a brothel or enabling premises to be used as a brothel is punishable under Section 3 of the legislation. The term 'brothel' is defined under section 2(a) of the act as any home, room, or location where prostitution is practiced. Section 4 of the legislation criminalizes anybody who subsists on the proceeds of prostitution. Even family members are not excluded from this part. Procuring, inducing, or taking a person for prostitution is punishable under Section 5 of the act. Pimps, brothel proprietors, and human traffickers are the focus of this section. People who detain a sex worker at a brothel or any other place where prostitution is practiced are punishable under Section 6 of the act. This part is aimed squarely at middlemen and brothel proprietors. Prostitution that takes place in or near public areas is punishable under Section 7 of the legislation. Any densely inhabited neighborhood, hostel, public religious worship, educational institution, hospital, nursing home, or any other site notified by the Commissioner of Police, Magistrate, or state government is considered a public place. The sex worker is punished under Section 8 of the act if he or she seduces or solicits a person for prostitution. A sex worker is prohibited from making any gestures that may attract someone to prostitution, according to this provision. The Indian Penal



Code, 1860, also addresses prostitution; however, it focuses on kidnapping and child prostitution. Under Sections 372 and 373, it is illegal to buy, sell, or import minors for prostitution. Under Article 23 of the Indian Constitution, trafficking of human beings, beggars, and other similar types of forced labor is prohibited, and any violation of this provision is a crime punished according to the law. This Act does not prohibit or penalize prostitution or sex workers, but it does make surrounding acts illegal. All third parties participating in this trade have been sanctioned, making it more difficult for sex workers to engage in prostitution. Instead of focusing on human trafficking, the ITPA appears to be more concerned with ending prostitution. Putting such regulations in place has only made life more difficult, vulnerable, and deadly for sex workers.

## LEGALIZATION OF PROSTITUTION

There has been a lot of debate in India on whether or not prostitution should be legalized. It has been noticed that it is advisable to control prostitution because the chances of it being abolished are slim. Prostitution has been regulated and authorized in some nations, including Canada, France, Germany, Denmark, and Wales. In Germany, for example, the occupation is not only legal but also taxed, with brothels permitted to advertise and make employment offers through HR firms. In 2016, Germany established new regulations aimed at protecting prostitutes by requiring a license for all prostitution trades as well as a prostitute registration certificate. The type of system, in which the profession is regulated and the rights of sex workers are protected, tends to cause less harm to sex workers, and stronger law enforcement prate the system from abuse and exploitation. These sex workers are not only at risk of contracting serious sexually transmitted illnesses such as HIV/AIDS, but they also face police brutality, a drop in pay, and harassment. In 2009, the Supreme Court declared prostitution to be lawful.

## REASONS FOR LEGALIZATION

**Legalization will safeguard kids:** According to the findings of numerous global studies, it is believed that up to 10 million children are involved in prostitution across the world. Child prostitution happens in all nations, regardless of their economic development level; nevertheless, Asia and South America have the most severe cases. We can assure that kids are removed from the industry by legalizing it and enacting tight regulations, therefore preserving their rights and ensuring their safety.

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## TAXATION

India's prostitution business is estimated to be worth \$8.4 billion. Legalizing it and taxing the profits like any other business will provide an incentive for the government to provide regular medical checkups and protect the rights of those who work in the field.

## WORKERS' RIGHTS WILL BE SAFEGUARDED

The rights of sex workers are protected by regulated prostitution. When a sex worker is sexually attacked or not given the agreed-upon wage, he or she has the right to file a complaint and have the matter resolved.

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## CRIMINALIZATION OR NOT?

Prostitution will be criminalized, which will curb trafficking. There will be no more violent sex, no more male dominance over females and no more male dominance over females. Minor sex workers are being reduced. Low pay, no long-term consequences for prostitutes. There are many more advantages to regularizing and legalizing prostitution than there are to not legalizing it. Prostitution has existed for centuries, and I don't see it being removed or erased from society anytime soon. Our history and experience teach us that it will persist regardless of how strict the laws are enacted.



## CONCLUSION

Rather than battling this trade, we must come to the aid of sex workers by enacting regulations that benefit them. It will undoubtedly grant them all of the powers they require. In West Bengal, a sex worker was recently murdered by her clients for refusing to engage in sexual intercourse. In another example, a sex worker was murdered by her customer because she sought one thousand rupees instead of three hundred rupees. Because it is the government's responsibility to create acceptable regulations for sex workers and prostitution, the central government is directly accountable for all of this. It is past time to view prostitution as a form of labor, and sex workers should be granted equal rights under Article 14 of the Indian Constitution. As a result, simply legalizing prostitution will not be enough to tackle the problem; instead, a unified rule governing its administration in our country is required. Prostitution regulation will assist to protect sex workers and their children from being exploited. Not only will it preserve the health of sex workers and society as a whole, but it will also protect the environment. To control this business in the future, a set of rules and regulations need to be fo

